

FILED

MAY 17 2007

DAVID CREWS, CLERK
By [Signature]
Deputy

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

**Jimmy J. Vance, Individually and on behalf
of the Wrongful Death Beneficiaries of
MILDRED VANCE, Deceased**

PLAINTIFF

v.

CAUSE NO. 3:07CV 062-D-A

**WINONA MANOR NURSING HOME,
CENTENNIAL HEALTHCARE PROPERTIES,
MARVELL MORGAN and JOHN and JANE DOES I-X**

DEFENDANTS

NOTICE OF REMOVAL

Defendant, Winona Manor Healthcare, LLC, d/b/a Winona Manor Nursing Home in the Plaintiff's Complaint [hereinafter "Winona Manor"], and hereby gives this Notice of Removal of the Cause described below from the Circuit Court of Montgomery County, Mississippi, to the United States District Court for the Northern District of Mississippi, Western Division, pursuant to 28 U.S.C. § 1332, 28 U.S.C. § 1441, and 28 U.S.C. § 1446, and states as follows:

1. This civil action has been brought and is now pending in the Circuit Court of Montgomery County, Mississippi. That action is styled and numbered on the general docket of that Court as follows: *Jimmy J. Vance, Individually and on behalf of the Wrongful Death Beneficiaries of Mildred Vance, Deceased v. Winona Manor Nursing Home, Centennial Healthcare Properties, Marvell Morgan and John and Jane Does I-X*, and is Civil Action No. 2007-0041CVM.

2. That action was commenced in the Circuit Court by the filing of a Complaint by the Plaintiff on March 27, 2007, and service of process was subsequently accomplished on Winona Manor on April 20, 2007, which is thirty (30) days or less before the date of removal of this matter

to this Court so as to be timely within the provisions of 28 U.S.C. § 1446(d).

3. This Court has jurisdiction over this matter, and this matter is properly removed to this Court, pursuant to 28 U.S.C. § 1332, 28 U.S.C. § 1441, and 28 U.S.C. § 1446.

4. The United States District Court for the Northern District of Mississippi, Western Division, is the proper venue for this matter since the matter is removed from the Circuit Court of Montgomery County, Mississippi.

6. This action is properly removed to this Court pursuant to 28 U.S.C. §§ 1332 and 1441, since the parties to this matter are of entirely diverse citizenship, and the amount in controversy exceeds Seventy Five Thousand and No/100 Dollars (\$75,000.00), exclusive of interest and costs.

7. At the time of the filing of the Complaint and at all times pertinent to this removal, the Plaintiff Vance was a citizen of Montgomery County, Mississippi.

8. At the time of the filing of the Complaint and at all times pertinent to this removal, Defendant Winona Manor Healthcare, LLC, an unincorporated association, was and is a foreign limited liability company organized under the laws of the State of Delaware, whose members are residents of states other than Mississippi.

9. At the time of the filing of the Complaint and at all times pertinent to this removal, Defendant Centennial Healthcare Properties Corporation was (and is) a Georgia Corporation with its principal place of business in Georgia. Defendant Marvell Morgan was (and is) a Mississippi resident. However, as shown herein, the Plaintiff claims Marvell Morgan, as the administrator of Winona manor owed a duty to Plaintiff in that role. Pursuant to Mississippi law, there is no possible

basis for recovery against the Mississippi Defendant, Marvell Morgan, and, as such, the Mississippi Defendant, Marvell Morgan has been improperly joined in this action solely for the purpose of impermissibly defeating diversity of citizenship jurisdiction in this matter. *Howard v. Estate of Harper ex rel. Harper*, 947 So.2d 854 (Miss. 2006). Accordingly, the citizenship of Defendant Marvell Morgan must be disregarded for purposes of determining diversity of citizenship jurisdiction under 28 U.S.C. § 1441.

11. Defendant Centennial Healthcare Properties hereby consents to and joins in to this removal, without waiver of any defenses available to it in this matter.

15. The matter in controversy in this matter exceeds the sum of Seventy Five Thousand and No/100 Dollars (\$75,000.00), exclusive of interest and costs, based on the Plaintiff's demands for damages as evidenced by the Complaint, and particularly considering the demands by the Plaintiff for punitive damages which are to be considered for determining the amount in controversy.

16. In the alternative, the lack of any specific amounts of punitive damages being claimed by the Plaintiff was not pleaded in good faith since the Plaintiff will certainly seek an amount in damages, including punitive damages, from Winona Manor in excess of Seventy Five Thousand and No/100 Dollars (\$75,000.00) in this matter.

17. A copy of all process, pleadings and orders served upon the defendant are attached as Exhibit "A" to this pleading.


18. Pursuant to 28 U.S.C. § 1446, the Plaintiff, through counsel, is being provided with a copy of this Notice of Removal, and a copy of this Notice of Removal is being filed with the Clerk of the Circuit Court of Montgomery County, Mississippi.

19. Pursuant to this removal and the clear provisions of 28 U.S.C. § 1446, there should be no further proceedings in the Circuit Court of Montgomery County, Mississippi.

WHEREFORE, the Defendant requests that this cause proceed in this Court as an action properly removed to this Court by the Defendant, Winona Manor Healthcare, LLC, and also requests any other relief appropriate under the circumstances.

Respectfully submitted,

HILLTOP MISSISSIPPI HEALTHCARE, LLC

BY: 
LISA WILLIAMS McKAY (MSB #9678)
WILLIAM W. MCKINLEY, JR. (MSB #9987)
G. SPENCER BEARD, JR. (MSB #102037)

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CERTIFICATE OF SERVICE

I, William W. McKinley, Jr, hereby certify that I have this day mailed, via United States Mail, postage prepaid, a true copy of the foregoing document to the following interested parties, with the exception that the original Notice of removal has been hand-delivered to Mr. Arlen B. Coyle Clerk, United States District Court, 911 Jackson Ave. Room 369, Oxford MS, 38655-3622

Mr. Rodney Bounds
Newton County Circuit Clerk
P.O. Box 447
Decatur, MS 39327

John F. Hawkins, Esq. (MSB #9556)
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Michael C. Moore
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Jackson, MS 39201

THIS the 7th day of May, 2007.



WILLIAM W. MCKINLEY, JR. (MSB #9987)
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